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FOR ACTION

RECOMMENDATION FOR A REVISED MODEL BASIC CO-OPERATION AGREEMENT BETWEEN UNICEF AND GOVERNMENTS

The Executive Director recommends that the Executive Board review and adopt the text of the model Basic Co-operation Agreement (contained in the annex to the present document), and that the Executive Board authorize the secretariat to use this model agreement as the basis for negotiating all new agreements with co-operating Governments and for renegotiating all existing agreements.

INTRODUCTION

1. The Executive Director submitted to the Executive Board at its 1990 regular session the attached model Basic Co-operation Agreement for approval by the Executive Board and recommended that the Executive Board authorize UNICEF to use this revised Agreement as the basis for establishing programmes of co-operation (E/ICEF/1990/L.16). This Agreement was proposed to replace the existing basic agreements between UNICEF and the Governments with which it co-operates in programmes within its mandate. The Executive Board, however, adopted the following decision:

"1990/34. Revised model Basic Co-operation Agreement

"On the recommendation of the Committee on Administration and Finance,

"The Executive Board

"Reviews and notes the text of the model Basic Co-operation Agreement, and authorizes the secretariat to use this model Agreement as the basis for negotiating agreements with co-operating Governments where no such agreement now exists." 1/

"1/ It is also agreed that the secretariat will resubmit the text of the revised model Basic Co-operation Agreement between UNICEF and Governments for approval at the 1991 Executive Board.

2. In accordance with this decision, the Executive Director hereby resubmits the text of the revised model Basic Co-operation Agreement.

I. BASIC AGREEMENT

3. At present, UNICEF co-operation with Governments is based on a model agreement that was prepared in the early 1950s and revised minimally in subsequent years, most recently in 1972. However, this model is neither adequate for the evolving nature of UNICEF co-operation nor does it reflect the organization's expanded mandate approved by the General Assembly in resolutions 417 (V) of 1 December 1950 and 802 (VIII) of 6 October 1953, nor subsequent Board decisions. Furthermore, the application of the UNICEF Financial Regulations and Rules has changed some aspects of UNICEF programming and the way in which the organization accounts for its income and expenditures. These changes need to be reflected in the agreements with Governments.

Revised model text

4. The revised model Agreement takes account of the expanded mandate of UNICEF, the programming changes introduced by the Financial Regulations and Rules and the

accounting procedures for UNICEF income and expenditures. The Agreement also defines, more precisely, the terms and conditions for co-operation between host Governments and UNICEF; it establishes the reciprocal commitments of UNICEF and the Government; and it outlines the administrative and technical arrangements for implementing UNICEF-supported programmes.

UNICEF offices

5. In preparing the new model Agreement, some of the difficulties experienced in applying existing agreements have been taken into account. For example, UNICEF now uses several different agreements, depending on whether the UNICEF entity has the status of a country office, an area office or a regional office. In some countries, separate agreements are required for establishing a sub-office outside the capital city. The proposed model Agreement is sufficiently comprehensive to be applicable in all of the above-mentioned situations and it is intended to be signed by all Governments co-operating with UNICEF, whether or not UNICEF has established an office in the country. Once in force, the Agreement would allow UNICEF to administer its co-operation with a specific Government from an office established elsewhere and to strengthen or modify such administrative arrangements, e.g., to establish a country office and sub-offices as may be required by the size of the programmes of co-operation.

Basic Co-operation Agreement

6. The proposed model Agreement also takes into account UNICEF operational needs as they have evolved over the years and the terminology used in the Agreement has been updated to reflect the terminology used in programme delivery. Thus, the term "Basic Agreement", which was used to describe previous Agreements, has now been replaced by the term "Basic Co-operation Agreement", which more accurately reflects the relationship between UNICEF and Governments, whereby programme activities are designed and implemented with the full participation of the Government concerned.

Privileges and immunities

7. Another important change is contained in the provisions relating to the privileges and immunities granted to UNICEF by Governments. Earlier Agreements referred to the application of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly as resolution 22 A (I) of 13 February 1946. However, experience has shown that when issues arise on the nature and extent of the privileges and immunities to be extended to UNICEF and its staff, the existing Agreements, with only a passing reference to the above-mentioned Convention, do not help to resolve such questions, especially if the Government concerned is not a party to the above-mentioned Convention. While the proposed model Agreement uses the Convention as its basic reference, the new Agreement explicitly defines the privileges and facilities which UNICEF considers essential for establishing operations in a country.

Settlement of disputes

8. The proposed Agreement also introduces a new procedure for resolving disputes with Governments which may arise in the interpretation or application of the Basic Co-operation Agreement. It is envisaged that disputes will be resolved through negotiations and conciliation and that arbitration will be only a last resort. The new model Agreement also introduces a mechanism for the formal confirmation of the Agreement, following its signature, in accordance with the mechanism proposed in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, adopted on 20 March 1986 (A/CONF.129/15).

II. CONCLUSION

9. The proposed Agreement has been developed in consultation with the Office of Legal Affairs of the United Nations Secretariat, and due account has been taken of similar agreements that have been drafted for other organizations of the United Nations system. During the past 24 months, UNICEF has postponed all renegotiations with Governments on basic co-operation agreements, pending the adoption of the revised text. The new Basic Co-operation Agreement is now urgently needed to enable UNICEF to negotiate an adequate legal basis for its activities in all countries where it co-operates in programmes.

Annex

MODEL BASIC CO-OPERATION AGREEMENT BETWEEN THE UNITED NATIONS CHILDREN'S FUND AND GOVERNMENTS

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AGREEMENT BETWEEN THE UNITED NATIONS CHILDREN'S FUND
AND
THE GOVERNMENT OF _____

PREAMBLE

WHEREAS the United Nations Children's Fund (UNICEF) was established by the General Assembly of the United Nations by resolution 57 (I) of 11 December 1946, as an organ of the United Nations, and, by this and subsequent resolutions, was charged with the responsibility of meeting, through the provision of financial support, supplies, training and advice, the emergency and long-range needs of children and their continuing needs, and providing services in the fields of maternal and child health, nutrition, water supply, basic education and supporting services for women in developing countries, with a view to strengthening, where appropriate, activities and programmes of child survival, development and protection in countries with which UNICEF co-operates, and

WHEREAS UNICEF and the Government of _____ (hereinafter called the Government) wish to establish the terms and conditions under which UNICEF shall, within its mandate, co-operate in programmes in _____,

NOW, THEREFORE, UNICEF and the Government, in a spirit of friendly co-operation, have entered into the present Agreement.

ARTICLE I

Definitions

For the purpose of the present Agreement, the following definitions shall apply:

(a) UNICEF means the United Nations Children's Fund;

(b) Government means the Government of _____;

(c) Host country or country means _____;

(d) Parties means UNICEF and the Government;

(e) Convention means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946;

(f) UNICEF office means the organizational unit(s) in the host country through which UNICEF co-operates in programmes in the country and includes the field offices established in the country;

(g) Head of Office means the UNICEF representative to the country and includes the UNICEF regional director where applicable;

(h) UNICEF officials means all members of the staff of UNICEF employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly resolution 76 (I);

(i) Experts on mission means individuals, other than UNICEF officials, performing missions for UNICEF;

(j) Persons performing services on behalf of UNICEF means corporate or individual contractors, institutions or firms and their employees, with the exception of nationals of the host country and of UNICEF officials and experts on mission, retained to execute or to assist in the execution of programmes of co-operation;

(k) UNICEF personnel means UNICEF officials and experts on mission;

(l) Programmes of co-operation means the programmes of the host country in which UNICEF co-operates as provided in article III of the present Agreement;

(m) Master plan of operations means the country programme document, agreed to between UNICEF and the Government, containing the programmes of the host country in which UNICEF co-operates as provided in article III of the present Agreement;

(n) Greeting Card Operation means the organizational entity established within UNICEF to generate public awareness, support and additional funding for UNICEF mainly through the production and marketing of greeting cards and other products.

ARTICLE II

Scope of the Agreement

1. The present Agreement embodies the basic conditions under which UNICEF shall, within its mandate, co-operate in programmes in the country.

2. UNICEF co-operation in programmes in the country shall be provided consistently with the relevant resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations and governing bodies of UNICEF.

ARTICLE III

Programmes of co-operation

1. The programmes of co-operation agreed to between the Government and UNICEF shall be contained in a master plan of operations to be signed by UNICEF, the Government and, as the case may be, other participating institutions.

2. The master plan of operations shall define the particulars of the programmes of co-operation, setting out the objectives of the activities to be carried out, the undertakings of UNICEF, the Government and the participating institutions and the estimated financial resources required to carry out the programme activities.

3. The Government shall permit UNICEF personnel to observe and monitor all the phases of the programmes of co-operation.

4. The Government shall also keep such statistical records concerning the execution of each master plan of operations as the parties shall consider necessary and shall supply any of such records to UNICEF at its request.

5. The terms of the present Agreement shall apply to all aspects of the programmes of co-operation in the country, as contained in the master plan of operations.

6. The Government shall co-operate with UNICEF and shall provide the means necessary for adequately informing the public about the programme activities covered by the present Agreement.

ARTICLE IV

UNICEF office

1. The Government agrees that UNICEF may establish and maintain a UNICEF office in the country, as required, to assist in implementing the programmes of co-operation.

2. UNICEF may also establish and maintain a regional/area office in the country to provide programme support to other countries in the region/area.

3. In the event that UNICEF does not maintain a UNICEF office in the country, it may provide the programme support agreed to between UNICEF and the Government under the present Agreement through a UNICEF regional/area office established in another country.

ARTICLE V

Personnel

1. UNICEF may assign to the UNICEF office in the country such UNICEF personnel or other personnel as are deemed necessary by UNICEF to administer and provide support to the programmes of co-operation.

2. UNICEF may designate UNICEF personnel to visit the country for purposes of consulting and co-operating with the corresponding officials of the Government in connection with:

(a) The review, preparation, monitoring and evaluation of the programmes of co-operation;

(b) The shipment, receipt, distribution or use of the supplies, equipment and other materials provided by UNICEF;

(c) Advising the Government regarding the progress of the programmes of co-operation;

(d) Any other matters relating to the application of the present Agreement.

3. UNICEF shall, from time to time, notify the Government of the names of UNICEF officials, experts on mission and persons performing services on behalf of UNICEF assigned to the UNICEF office and of the changes in the status of such persons.

ARTICLE VI

Government contribution

1. The Government undertakes to provide to UNICEF, as required:

(a) Appropriate office premises for the UNICEF office;

(b) Postage and telecommunications for official purposes;

(c) Transportation for UNICEF personnel, or fuel for official vehicles used by them, in the performance of their official functions within the country;

(d) Government accommodation, where available, to UNICEF personnel while in official travel status within the country.

2. The Government shall also provide funds, up to mutually agreed amounts, to cover the costs of certain local services as the parties shall agree, including, but not limited to, equipment, fixtures and maintenance for the office premises.

3. The Government shall also assist UNICEF:

(a) In the location of suitable housing accommodation for internationally recruited UNICEF personnel;

(b) In the installation and supply at preferential rates of utility services.

4. In the event that UNICEF does not maintain a UNICEF office in the country, the Government agrees to contribute towards the expenses incurred by UNICEF in maintaining a UNICEF regional/area office elsewhere, from which support is provided to the programmes of co-operation in the country, up to a mutually agreed amount.

ARTICLE VII

Supplies, equipment and other assistance

1. UNICEF contribution to programmes of co-operation may be in the form of financial and other assistance. Supplies, equipment and other materials furnished by UNICEF for the programmes of co-operation under the present Agreement shall be transferred to the Government upon arrival in the country, unless otherwise provided in the master plan of operations.

2. UNICEF may place on the supplies, equipment and other materials it furnished such markings as are deemed necessary to identify them as being provided by UNICEF.

3. The Government shall be responsible for, and shall meet the costs associated with, the clearance, receipt, unloading, storage, insurance, transport and distribution of the supplies, equipment and other materials provided by UNICEF under the present Agreement, after their arrival in the country.

4. The Government shall exert its best efforts, and take the necessary steps and measures, to ensure that the supplies, equipment, financial and other assistance provided by UNICEF under the present Agreement are utilized in conformity with the purposes stated in the master plan of operations and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be required of any recipient of supplies, equipment and other materials furnished by UNICEF unless, and only to such extent as, provided in the relevant master plan of operations.

5. No taxes including value added tax, fees, tolls or duties, shall be levied on the supplies, equipment and other materials furnished by UNICEF for the programmes of co-operation.

6. The Government shall, upon request by UNICEF, return to UNICEF any funds, supplies, equipment and other materials provided to the Government by UNICEF, that have not been used in the programmes of co-operation.

7. The Government shall maintain proper accounts, records and documentation in respect of the funds received from UNICEF and disbursed by the Government, in such form as is necessary to permit adequate review of the use made of such funds. The form and content of the accounts, records and documentation required shall be as agreed upon by the parties. Authorized officials of UNICEF shall have access to relevant documents concerning expenditures against funds provided by UNICEF.

8. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF progress reports on the programmes of co-operation and certified financial statements, audited in accordance with existing government rules and procedures.

ARTICLE VIII

Intellectual property rights

1. Ownership of patent rights and rights on any discoveries or inventions, as well as copyrights and other similar rights on works (including documents, plans, reports, etc.) resulting from the programme activities in which UNICEF co-operates under the present Agreement, shall be vested in UNICEF. The Government shall inform UNICEF promptly of any particular right or rights on any discovery or invention or works which, to its knowledge, have resulted from the implementation of programme activities in which UNICEF co-operates, and shall assist UNICEF in securing the protection of such rights, through registration or otherwise, in accordance with applicable law.

2. Except as otherwise agreed by the parties in each case, the Government shall be entitled to use or exploit and to obtain any necessary licences, free of any royalty or charge of a similar nature for the use or exploitation of the rights herein provided.

ARTICLE IX

Privileges and immunities

1. The Government shall extend to UNICEF, its property, funds and assets, and to its officials and experts on mission, the privileges and immunities set out in the Convention.

2. Without prejudice to the provisions of paragraph 1 of the present article, the Government shall in particular extend to UNICEF and its personnel the privileges, immunities, rights and facilities provided in articles X to XVII hereunder.

ARTICLE X

UNICEF office, property, funds and assets

1. The premises of the UNICEF office shall be inviolable. The appropriate government authorities shall exercise due diligence to ensure the security and protection of the premises of the UNICEF office.

2. Without being restricted by financial controls, regulations or moratoria of any kind, UNICEF may freely:

(a) Bring into the country from any other country and acquire from authorized banking and financial institutions, funds, securities, currencies of any kind and negotiable instruments;

(b) Accept funds, securities, currencies of any kind and negotiable instruments conveyed to UNICEF through bequests, or obtained from UNICEF activities in the country;

(c) Hold and use funds, securities, currencies of any kind and negotiable instruments for its programmes in the country, maintain and operate accounts in any currency, and convert any currencies held by it into any other currency;

(d) Transfer its funds, securities, currencies of any kind and negotiable instruments from the country to any other country or within the country, to individuals, firms, institutions or agencies, including any organization or agency of the United Nations system.

3. The rate of exchange available to UNICEF for the financial activities envisaged above shall be the most favourable, legally available rate of exchange.

4. In exercising the rights accorded to it under paragraph 2 of the present article, UNICEF shall pay due regard to any representation made to it by the Government and shall endeavour to give effect thereto, so far as this is possible without detriment to its own interests.

ARTICLE XI

Facilities in respect of communications

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government, including its diplomatic missions, or to other intergovernmental organizations in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of UNICEF shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications to be added by joint agreement. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.

3. UNICEF shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunication Convention (Nairobi, 1982) and the regulations annexed thereto.

ARTICLE XII

Facilities in respect of means of transportation

The Government shall grant UNICEF necessary permits or licences for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes and other craft required for programme activities under the present Agreement.

ARTICLE XIII

UNICEF personnel

Officials

1. UNICEF officials shall enjoy the following privileges and immunities:

(a) Immunity from legal process of any kind in respect of words spoken or written or in respect of any act performed in an official capacity. Such immunity will continue even after termination of employment with UNICEF;

(b) The same protection and repatriation facilities with respect to themselves, their spouses and other dependants as are accorded in time of crisis to diplomatic envoys;

(c) Exemption from taxation in respect of salaries, emoluments and allowances paid by UNICEF;

(d) Prompt clearance and issuance without cost of necessary visas, licences or permits necessary for the effective exercise of their functions;

(e) Free movement within or to or from the country, to the extent necessary for the implementation of the programmes of co-operation;

(f) Exemption, with respect to themselves, their spouses, and other dependants, from immigration restriction and alien registration;

(g) The issuance of any permits necessary for importation free of duty of household and personal effects or other property, materials and supplies intended for their personal use or consumption and authorization to take any of them out of the country on completion of their assignment;

(h) Immunity from service in the military and any other obligatory service.

Experts on mission

2. Experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention.

ARTICLE XIV

Persons performing services

Persons performing services on behalf of UNICEF, other than nationals of the host country employed locally, shall be granted the privileges and immunities specified in article V, section 18, of the Convention. They shall, in particular, be granted the rights and facilities specified in subparagraphs (c), (d), (e) and (g) of paragraph 1 of article XIII of the present Agreement.

ARTICLE XV

Other personnel

The terms and conditions of employment for personnel recruited locally by UNICEF and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations and governing bodies of UNICEF.

ARTICLE XVI

Head of the UNICEF office

The head of the UNICEF office shall enjoy the privileges, immunities and facilities granted to heads of diplomatic missions accredited to the Government. For this purpose his or her name shall be incorporated into the diplomatic list. The senior officials, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities accorded by the Government to the members of diplomatic missions of comparable rank.

ARTICLE XVII

Greeting cards and other UNICEF products

Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes.

ARTICLE XVIII

Waiver of privileges and immunities

The privileges and immunities accorded under the present Agreement are granted in the interest of the United Nations, including UNICEF, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

ARTICLE XIX

Claims against UNICEF

1. UNICEF co-operation in programmes under the present Agreement is provided for the benefit of the Government and people of the host country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.

2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNICEF, UNICEF officials, experts on mission and persons performing services on behalf of UNICEF and shall, in respect of such claims, indemnify and hold them harmless, except where the Government and UNICEF agree that the particular claim or liability was caused by gross negligence or wilful misconduct.

ARTICLE XX

Settlement of disputes

1. Any relevant matter for which no provision is made in the present Agreement and any issue, controversy or dispute between UNICEF and the Government arising out of or relating to the interpretation or application of the present Agreement shall be settled amicably by negotiations between the parties or through conciliation and, failing settlement by either or both of these means, by arbitration.

2. If the parties agree to settlement by conciliation, either party shall have the right to request the appointment of a conciliator by the President of the International Court of Justice. The procedure for the conciliation proceedings shall be fixed, in consultations with the parties, by the conciliator. The recommendation of the conciliator shall contain a statement of the reasons on which it is based. The parties shall give due consideration to the recommendation of the conciliator.

3. In the event that the parties fail to settle their dispute by negotiation, or through conciliation, or both, the aggrieved party may request the appointment of an arbitrator by the President of the International Court of Justice. The procedure for the arbitration proceedings shall be fixed, in consultation with the parties, by the arbitrator. The decision of the arbitrator shall contain a statement of the reasons on which it is based. The parties shall be bound by such decision and the award of the arbitrator made in accordance with the present Agreement.

4. The expenses of the conciliation or arbitration shall be borne equally by the parties.

ARTICLE XXI

Interpretation

1. The present Agreement shall be interpreted and applied liberally in the light of changing circumstances with a view to achieving its primary purpose, which is to enable UNICEF to discharge its responsibilities fully and efficiently and to execute its mandate in the country.

2. The present Agreement supersedes and replaces all previous basic agreements, including addenda thereof, between UNICEF and the Government.

ARTICLE XXII

Amendments

The present Agreement may be modified or amended only by written agreement between the parties hereto.

ARTICLE XXIII

Termination

The present Agreement shall cease to be in force six months after either of the parties gives notice in writing to the other of its decision to terminate the Agreement, except that those provisions of the present Agreement that are necessary for the orderly cessation of the activities of UNICEF and the disposal of its property in the country, and the resolution of any disputes between the parties shall survive its termination.

ARTICLE XXIV

Entry into force

The present Agreement shall enter into force, following signature, on the day after the exchange between the parties of an instrument of ratification or acceptance by the Government, and of an instrument constituting an act of formal confirmation by UNICEF.

IN WITNESS WHEREOF, the undersigned, being duly appointed representatives of the Government and UNICEF, respectively, have on behalf of the parties signed the present Agreement, in the _____ language(s). For purposes of interpretation and in case of conflict, the _____ text shall prevail.

Done at _____, this _____ day of _____, nineteen hundred _____.

FOR THE UNITED NATIONS CHILDREN'S FUND:

Name:

Title:

_____
Signature

FOR THE GOVERNMENT:

Name:

Title:

_____
Signature